

## Calendar No. 186

109TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
109-116

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PROVIDING FOR THE ACQUISITION OF SUBSURFACE MINERAL INTERESTS  
IN LAND OWNED BY THE PASCUA YAQUI TRIBE AND LAND HELD IN  
TRUST FOR THE TRIBE

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JULY 29, 2005.—Ordered to be printed

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Mr. MCCAIN, from the Committee on Indian Affairs,  
submitted the following

### R E P O R T

[To accompany S. 1291]

The Committee on Indian Affairs, to which was referred the bill (S. 1291) to provide for the acquisition of subsurface mineral interests in land owned by the Pascua Yaqui Tribe and land held in trust for the Tribe, having considered the same, reports favorably thereon without amendment and recommends that the bill (as amended) do pass.

#### PURPOSE

The purpose of S. 1291 is to allow the United States to obtain and/or consolidate ownership of the subsurface rights, title and interests (including subsurface mineral rights), in its name, in trust for the Pascua Yaqui Tribe (hereinafter the “Tribe”). These subsurface interests are beneath the surface of land already either owned by the Tribe, or held in trust for the Tribe by the United States.

#### BACKGROUND

The Tribe has purchased in fee four parcels of land, totaling approximately 436 acres, from the State of Arizona. These parcels are contiguous to the Tribe’s reservation near Tucson, Arizona. The Tribe subsequently applied to have these lands taken into trust pursuant to Department of the Interior Land Into Trust regulations found in the Code of Federal Regulations at Title 25, Part 151.

The Bureau of Indian Affairs approved the trust application pursuant to the Part 151 regulations. However, the State of Arizona objected due to its ownership of the subsurface mineral rights beneath the subject lands. Arizona law prevents the State from sell-

ing mineral interests and the only way they can be acquired is through an act of condemnation brought by the United States pursuant to 40 U.S.C. 3113. The State of Arizona has consented to a condemnation action (see attached).

Based on the State of Arizona's objection, and with the Tribe's consent, the Land Into Trust application was stayed pending resolution of the subsurface mineral rights title issue.

It has since been discovered that an additional 140 acres of land with the Tribe's reservation was also former State of Arizona trust land that was purchased in fee by the Tribe and taken into trust without obtaining the mineral estate. The State of Arizona has likewise consented to a condemnation action, pursuant to 40 U.S.C. 3113, with regard to these additional 140 acres.

In addition to the condemnation of the State of Arizona mineral interests, S. 1291 also deals with mineral interests owned by the United States. Under 360 acres of land within the Tribe's reservation, the United States owns the mineral interests for itself, rather than in trust for the Tribe. Although that acreage was originally purchased in fee by the Tribe, it was originally patented by the United States and the United States retained the mineral interests to that property for its own benefit, currently administered by the Bureau of Land Management. S. 1291 would authorize the Bureau of Land Management to transfer beneficial ownership of those mineral interests to the Tribe, to be held in trust by the United States.

#### LEGISLATIVE HISTORY

S. 1291 was introduced on June 23, 2005, for himself, and was referred to the Committee on Indian Affairs. On June 29, 2004, at an open business session duly noticed, the Committee adopted S. 1291 by voice vote and ordered the bill reported favorably to the Senate with a recommendation that the Senate pass the bill.

#### SECTION-BY-SECTION ANALYSIS OF S. 1291

##### *Section 1. Short title*

This section cites the short title as the "Pascua Yaqui Mineral Rights Act of 2005".

##### *Section 2. Definitions*

The term "Secretary" means the Secretary of the Interior. The term "State" means the State of Arizona. The term "Tribe" means the Pascua Yaqui tribe.

##### *Section 3. Acquisition of subsurface mineral interests*

This section set forth the specific tribally-owned parcels that the Secretary shall acquire through eminent domain from the State of Arizona, only by consent of the State, all subsurface rights, title, and interests (including subsurface mineral interests) held by the State. Total subsurface estate owned by the State of Arizona includes 436 acres that are adjacent to the reservation, but not held in trust for the tribes, and 140 acres that are located within the reservation boundary with the surface estate currently held in trust for the tribe.

The section also sets forth that the Secretary shall pay to the State an amount equal to the market value of the subsurface min-

eral interests acquired and that the Tribe agrees to fully reimburse the Secretary relating to the acquisition, including payment to the State for the acquisition.

*Section 4. Interests taken into trust*

This section sets forth that the Secretary shall take into trust for the benefit of the Tribe the subsurface rights, title, and interests, formerly reserved to the United States. The 360 acres of subsurface estate, located beneath the surface currently held in trust for the Tribe, are administered by the Bureau of Land Management. This section authorizes the BLM to transfer the subsurface estate to the U.S. to be held in trust for the Tribe.

This section also sets forth that the Tribe shall pay to the Secretary only the transaction costs relating to the assessment, review, and transfer of the subsurface rights, title, and interests taken into trust under this section.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On June 29, 2005, the Committee, in an open business session, considered S. 1291 and ordered S. 1291 favorably reported to the full Senate with a recommendation that the bill do pass.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1291 as calculated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 19, 2005.*

Hon. JOHN MCCAIN,  
*Chairman, Committee on Indian Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1291, the Pascua Yaqui Mineral Rights Act of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis and Mike Waters.

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*S. 1291—Pascua Yaqui Mineral Rights Act of 2005*

S. 1291 would direct the Department of the Interior (DOI) to acquire all subsurface rights and interests to certain lands in Arizona by eminent domain. Once acquired, these interests would be put into trust for the Pascua Yaqui Tribe. The tribe, which already owns the related surface estate, would reimburse the department for any transaction and appraisal costs.

Based on information provided by DOI and the state of Arizona and assuming the availability of appropriated funds, CBO estimates that acquiring the affected property rights for the Pascua Yaqui Tribe would cost less than \$500,000 over the next year. We

expect that reimbursement by the tribe for associated transaction costs would sum to a few thousand dollars; therefore, we estimate that enacting this legislation would have no significant effect on direct spending. Enacting S. 1291 would not affect revenues.

S. 1291 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The acquisitions authorized by the bill would be voluntary on the part of the tribe and the state of Arizona; any costs they would incur as a result of these acquisitions would be incurred voluntarily.

The CBO staff contacts for this estimate are Deborah Reis and Mike Waters. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee has concluded that S. 1291 will reduce regulatory or paperwork requirements and impacts.

#### EXECUTIVE COMMUNICATIONS

The Committee has received no communications from the Executive Branch regarding S. 1291.

#### CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law are required to be made. The committee has determined that there are no changes to existing law made by S. 1291.

#### COMMITTEE CORRESPONDENCE

STATE OF ARIZONA,  
OFFICE OF THE GOVERNOR,  
*Phoenix, AZ, May 20, 2005.*

Re Senate Companion Bill for H.R. 631.

Hon. JOHN MCCAIN,  
*U.S. Senate,*  
*Russell Senate Office Building, Washington, DC.*

Hon. JON KYL,  
*Hart Senate Office Building,*  
*Washington, DC.*

DEAR SENATORS MCCAIN AND KYL: I am writing to you at the request of the Pascua Yaqui Tribe of Arizona, a federally recognized Indian Tribe.

At the request of the Pascua Yaqui Tribe, the Honorable Raul Grijalva has sponsored a bill in the House of Representatives that is designated as H.R. 631. This is a bill in which the Tribe seeks the assistance of the U.S. in condemning subsurface mineral interests owned by the State of Arizona under land for which either the Tribe, or the United States in trust for the Tribe, owns the surface interests.

This bill provides for the U.S. to acquire subsurface rights only. It does not involve an attempt to implement new gaming. The payment required under the bill is not a proposed exchange of land. Rather, the Pascua Yaqui Tribe will pay the full value of the mineral interests in cash. In addition, the Tribe will also be required to pay the State's costs in the condemnation action in cash, plus will also pay, in cash, all the costs and expenses of the condemnation incurred by the United States.

As it is written, to be successful this bill requires the consent of the State of Arizona. On behalf of the State of Arizona, and its Land Trust, this letter is to inform you that the State of Arizona supports H.R. 631, and also supports the request of the Pascua Yaqui Tribe that you jointly introduce a mirror image bill mirroring H.R. 631 in the Senate.

Thank you each for your consideration.

Yours very truly,

JANET NAPOLITANO,  
*Governor.*

